

The Commission has described ONA as an "evolutionary" policy,^{25/} suggesting that it progresses with each new formulation. In fact, ONA has regressed, rather than evolved, from what was once conceived as an open network scheme based on new forms of interconnection to a repackaging of limited services that the BOCs were already offering or would have offered anyway. Because the BOCs' ONA plans, as approved by the Commission, propose no new, improved or advanced means of interconnection and do not incorporate the forward-looking network designs originally envisioned in Computer III, the Commission is essentially in the same position that it was when it initiated Computer III. It is reduced to asking the BOCs how and when they will deploy new technology in order to meet the needs of ESPs for new and efficient access arrangements. This regression confirms both the need to start over on ONA and that nothing would be lost by starting over, since no progress has been made.

For example, the Commission has acknowledged that the BOC's ONA plans consist largely of existing services,^{26/} and that the

^{25/} ONA Reconsideration Order, 5 FCC Rcd at 3086, ¶ 15.

^{26/} BOC ONA Order, 4 FCC Rcd at 168-69, 176, 196-202, ¶¶ 320, 338, 374-84. The Commission should also be aware that the BOCs' intrastate ONA plans are equally deficient. Pacific Bell, for example, plans to offer only three new ONA services under the "ONA plan" it recently submitted to the California P.U.C. See In the Matter of the Application of Pacific Bell Corporation for Approval of Basic Servicing Arrangements, Basic Service Elements and Complementary Network Services, Application 89-12-010, Filed December 5, 1989, Administrative Law Judge's Ruling (Public Utilities Commission of the State of California)

BOCs do not propose to implement any new access mechanisms for ESPs.^{27/} All the Commission can say about this technological stasis is that its "Computer III policies were never intended to dictate a 'flash cut' to new technologies or configurations," and "required unbundling [only] 'to the extent technologically feasible.'"^{28/} What the Commission's "Computer III policies were never intended to" permit is this degree of inertia five years after ONA was first conceptualized. All the Commission intends to do at this point to facilitate the "evolution" of ONA is to offer its sympathies to "those who had hoped that advanced technologies could be developed and implemented more quickly,"^{29/} and require "annual updated deployment plans,"^{30/} although more direction might be provided in the future.^{31/} Continuing in the same vein, the Commission "regard[s] fundamental unbundling" -- at one time the cornerstone of ONA -- "as a more long-term question, and [has] ... asked for the input of the IILC on the potential technical and operational

dated March 26, 1990 at page 1.

^{27/} Id. at 78-80, 82, 86 n.327, ¶¶ 152-58, 162, 166 n.327.

^{28/} ONA Reconsideration Order, 5 FCC Rcd at 3086, ¶ 15.

^{29/} BOC ONA Amendment Order, 5 FCC Rcd at 3116, ¶ 110.
That the Commission "share[s] the disappointment of those" who expected it to follow through on ONA is cold comfort.

^{30/} ONA Reconsideration Order, 5 FCC Rcd at 3086, at ¶ 15.

^{31/} Id. at 3086, ¶ 17.

difficulties involved."^{32/} That is a sad commentary on the erosion of the Commission's once-progressive ONA principles over the past several years.

The Commission also held out the promise in Computer III that ONA would help prevent discrimination. In response to MCI's evidence of admissions by BellSouth representatives, however, that:

(1) the same BellSouth personnel who determine which enhanced services BellSouth will provide are also responsible for approving or (as is more likely) rejecting new service requests from competing ESPs;^{33/} and

(2) ESPs' requests for network service features are subject to a screening procedure that BellSouth's own enhanced service operations avoid when they request new network features;^{34/} the Commission blandly stated that "[t]hese arguments raise issues decided in the Computer III proceeding."^{35/}

Of course, when Computer III was decided, the structure of ONA had not been worked out, so it was impossible to gauge how

^{32/} Id. at ¶ 3086, 16.

^{33/} See Petition for Reconsideration of MCI Telecommunications Corporation, CC Docket No. 88-2, Phase I, filed February 24, 1989 (MCI Pet. for Recon.), at 15-17.

^{34/} Id. at 17-20.

^{35/} ONA Reconsideration Order, 5 FCC Rcd at 3098 n.36.

any given element of BOC operations would factor into the antidiscrimination goals of ONA. A disturbing pattern emerges from a review of the ONA Reconsideration Order and BOC ONA Amendment Order; all difficult issues either should have been brought up or were decided in Computer III or will be left to future consideration. Obviously, Computer III no longer offers any such sanctuary for the Commission, since those orders were vacated. Those issues must now be addressed de novo.

There are also still large gaps in the ONA safeguards that the Commission has yet to fill in after further review. For example, in response to MCI's direct evidence of admissions by BellSouth representatives that it intends to price ONA services at what the (monopoly) market will bear rather than at cost, which would facilitate discriminatory pricing and cross-subsidization,^{16/} the Commission ordered the BOCs to submit further information regarding their state tariffing methods in amended ONA plans by April 15, 1991.^{17/} A wide range of additional issues was similarly left for further review, discussion and, possibly, resolution.^{18/}

^{16/} See MCI Pet. for Recon. at 20-25.

^{17/} BOC ONA Amendment Order, 5 FCC Rcd at 3113, ¶ 88.

^{18/} See ONA Reconsideration Order, 5 FCC Rcd at 3086-88, 3094, ¶¶ 15-18, 22, 23, 30, 83; BOC ONA Amendment Order, 5 FCC Rcd at 3105-09, 3111-14, 3116, ¶¶ 15-19, 33, 46, 50, 71, 74-78, 88, 97, 111.

Conclusion

After five years, the Commission still has not resolved many of the most basic issues determining the effectiveness of ONA, and those issues that have been addressed have generally been resolved in a manner contrary to the original intent behind ONA. Not only would continuation of the ONA Orders in their current form thus be contrary to the original intent of ONA, but such continuation would also be inconsistent with the Court's opinion in California v. FCC. The Court found that the Commission's promises for ONA in Computer III constituted an adequate record for "the Commission's finding that technologies for ensuring equal access have improved, and may be effective in preventing discrimination in ways not feasible in the past."^{19/} The Commission's actual implementation of ONA in the ONA Orders falls so far short of those promises that continuation of those orders in their current form would violate the Court's understanding, and thus its approval, of ONA.

Since the Commission has made so little progress, the most productive course of action at this point would be to propose in a supplemental notice a new ONA regime that would be fully open to ESPs, and take further comments on that proposal. Given the further ONA plan amendments ordered by the Commission and varied issues raised by the current ONA scheme that the Commission does

^{19/} 905 F.2d at 1233.

not intend to resolve at least until next year, proposing a new ONA scheme now would not take much additional time, especially in light of the time that will not have to be spent in future appeals and remands if the Commission follows its original goals for ONA. A few of the obviously necessary characteristics of effective ONA would be:

- o completely unbundled network features that ESPs could use for their services, irrespective of the features used to provide the BOCs' enhanced services;
- o rapid deployment of network features in response to ESP requirements;
- o prohibition against conflicts of interest within BOC organizations dealing with ESPs and BOC enhanced services; and
- o cost-based pricing of ONA services.

Other parties, of course, may perceive additional factors. Only such an approach will fulfill the original promise of ONA. MCI stands ready to assist the Commission in a good faith effort to review and implement effective ONA policies.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

Frank W. Krogh
Frank W. Krogh
Donald J. Elardo
1133 19th Street, N.W.
Washington, D.C. 20036
(202) 887-2372

Its Attorneys

September 10, 1990

APPENDIX B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Filing and Review of
Bell Operating Company
Open Network Architecture Plans

CC Docket No. 88-2
Phase I

In the Matter of
Computer III Remand Proceedings:
Bell Operating Company Safeguards
and Tier 1 Local Exchange Company
Safeguards

CC Docket No. 90-623

**COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION
ON FACTEL'S PETITION FOR STRUCTURAL RELIEF
AND REQUEST FOR WAIVER**

MCI TELECOMMUNICATIONS CORPORATION

Frank W. Krogh
Donald J. Elardo
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20554
(202) 887-2372

Its Attorneys

Dated: December 31, 1992

TABLE OF CONTENTS

	<u>Page</u>
Summary	ii
A. The Inadequacy of ONA and Other Alternative "Safeguards"	2
B. The Detrimental Impact of Pactel's Federal ONA Tariff	2
C. Unresolved Intrastate ONA Issues	5
D. More Recent Developments Confirm the Inadequacy of ONA and the Alternate "Safeguards"	8
E. Pactel's Waiver Request Improperly Seeks Relief Previously Denied by the Bureau	11
Conclusion	12

Summary

MCI opposes Pactel's request for structural relief and, in part, its accompanying request for waiver of a wide variety of ONA tariffing requirements. Although Pactel has nominally satisfied most of the Commission's stated requirements for elimination of structural separation, that is primarily the result of the Commission's failure to establish and maintain meaningful ONA requirements. Because of the serious defects in Pactel's ONA tariffs, and the inadequacy of the other non-structural "safeguards," Pactel should not be relieved of the structural separation requirements.

As MCI has previously explained, the Commission has allowed the BOCs to develop an ONA regime that does nothing to unbundle basic network capabilities for the benefit of enhanced services providers (ESPs). Accordingly, the BOCs' ONA tariffs fail to implement meaningful ONA, and it would be arbitrary and capricious to predicate structural relief partly on such tariffs.

Moreover, there are a variety of intrastate ONA issues that must be resolved before Pactel can reasonably be relieved of the structural separation requirements. The California Public Utilities Commission has not yet begun its announced review of intrastate ONA policy issues. Also, Pactel's waiver request to allow it to provide certain ONA services on a non-tariffed, contract basis would violate the nondiscrimination goals of ONA.

Pactel's 1992 ONA plan amendments, its waiver request to be relieved of the equal access requirement for operations support systems and Commission and BOC admissions as to the inadequacy of ONA in other fora also demonstrate the inadequacy of ONA as a predicate for structural relief.

Pactel's waiver requests to delay the offering of other ONA services should also be denied. The Bureau has already denied Pactel's waiver requests for such delay beyond the end of 1992, and Pactel has raised no new issues that it could not have raised previously.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Filing and Review of
Bell Operating Company
Open Network Architecture Plans

CC Docket No. 88-2
Phase I

In the Matter of
Computer III Remand Proceedings:
Bell Operating Company Safeguards
and Tier 1 Local Exchange Company
Safeguards

CC Docket No. 90-623

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION
ON PACTEL'S PETITION FOR STRUCTURAL RELIEF
AND REQUEST FOR WAIVER

Pursuant to the Commission's Public Notice,^{1/} MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby opposes the petition filed by Pacific Bell and Nevada Bell for removal of the Commission's structural separation requirements (Pactel Pet.)^{2/} and, in part, the Request of Pacific Bell and Nevada Bell for Waiver of Tariffing Requirements for Certain ONA Services (Pactel Waiver Request). Although Pactel has nominally satisfied most of the Commission's stated requirements for elimination of structural separation, that is more the result of the Commission's failure to establish and maintain meaningful requirements than a tribute to Pactel's efforts to provide Open Network Architecture (ONA) services. Because of the multiple, serious defects in Pactel's ONA tariffs, and the inadequacy of the other non-structural "safeguards,"

^{1/} DA 92-1617 (released Dec. 8, 1992).

^{2/} Notice of Compliance With Network Architecture Requirements and Petition for Removal of the Structural Separation Requirement, filed Nov. 23, 1992.

Pactel must not be released from the structural separation requirements.

A. The Inadequacy of ONA and Other Alternative "Safeguards"

MCI has explained at length in CC Docket No. 90-623 why the Bell Operating Companies (BOCs) should not be released from the structural separation requirements.^{3/} Whatever assumed benefit there might be from BOC provision of enhanced services on an unseparated basis will be vastly outweighed by the increased threat of cross-subsidies and anticompetitive conduct permitted by ONA and the Commission's other alternative "safeguards." MCI stands by those comments, which are incorporated herein by reference.

B. The Detrimental Impact of Pactel's Federal ONA Tariff

Pactel's partial compliance with the pro forma requirements set forth in the BOC ONA Amendment Order^{4/} is meaningless. Although it has filed a federal tariff for many of its initial ONA services, and that tariff is in effect, that tariff does not implement meaningful ONA, and the Commission should not have allowed it into effect. MCI has explained in detail the

^{3/} See Comments of MCI Telecommunications Corporation and Reply Comments of MCI Telecommunications Corporation, Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, filed March 8, 1991 and April 9, 1991, respectively, and ex parte letter from Frank W. Krogh, MCI, to Donna R. Searcy, Secretary, FCC, in CC Docket No. 90-623, filed March 15, 1991, with attachments.

^{4/} Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, 5 FCC Rcd 3103, 3105 at ¶ 13 (1990), appeal docketed sub nom. People of the State of California v. FCC, Nos. 90-70336 and consolidated cases (9th Cir. July 5, 1990).

Commission's failure to develop ONA,^{2/} as promised in Computer III,^{4/} and the resulting uselessness of the ONA tariffing required by the ONA Part 69 Order.^{7/} Because of the inadequate and inappropriate unbundling of ONA service elements authorized in that Order, the ONA tariffs now in effect fail to implement true ONA for enhanced service providers (ESPs).^{8/} MCI incorporates by reference its pleadings on these issues cited in the preceding footnotes and its Petition to Reject the ONA tariffs.^{9/} Because Pactel's federal ONA service tariff does not implement anything approaching meaningful ONA, it would be arbitrary and capricious for the Commission to predicate structural relief partly on that tariff.

^{2/} See, e.g., Comments of MCI Telecommunications Corporation, Reply Comments, Petition for Reconsideration of MCI Telecommunications Corporation, Reply Comments of MCI Telecommunications Corporation, Comments of MCI Telecommunications Corporation and Reply Comments of MCI Telecommunications Corporation, CC Docket No. 88-2, Phase I, filed April 18, 1988, May 31, 1988, February 24, 1989, April 19, 1989, June 3, 1991 and June 24, 1991, respectively; Comments of MCI Telecommunications Corporation, Computer III Remand Proceedings, CC Docket No. 90-368, filed Sept. 10, 1990.

^{4/} Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, Phase I, 104 F.C.C. 2d 958 (1986), on recon., 2 FCC Rcd 3035 (1987); Phase II, 2 FCC Rcd 3072 (1987), vacated and remanded sub nom. California v. FCC, 905 F.2d 1217 (9th Cir. 1990).

^{7/} Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture: Policy and Rules Concerning Rates for Dominant Carriers, CC Docket Nos. 89-79 and 87-313 (ONA Part 69 Proceeding), 6 FCC Rcd 4524 (1991).

^{8/} See Petition for Reconsideration and Reply of MCI Telecommunications Corporation to Oppositions to its Petition for Reconsideration, ONA Part 69 Proceeding, filed August 26, 1991 and Oct. 16, 1991, respectively.

^{9/} Petition to Reject or, in the Alternative, to Suspend and Investigate, ONA Access Charge Tariff Filings, filed by MCI Telecommunications Corporation on Nov. 26, 1991.

A telling indicator of the utter triviality of ONA as it has been developed thus far is the infinitesimal proportion of BOC switching services that have actually been unbundled in the ONA tariffs. Those tariffs were filed pursuant to the ONA Part 69 Order, which the Commission has characterized as "the culmination of the Commission's history of encouraging ONA development."¹⁰ As MCI pointed out in Exhibit A hereto, a portion of MCI's Petition to Reject the ONA tariffs,¹¹ the unbundled ONA services account for about 1.7% of the BOCs' current "Local Switching" revenues. The other 98.3% of the Local Switching revenues are still derived from services that remain in their pre-ONA bundled form.

C. Unresolved Intrastate ONA Issues

Pactel's accompanying Waiver Request raises troubling questions as to its commitment to ONA. Pactel states (at 11) that since there is insufficient intrastate demand in California to warrant a general tariff offering of DID Trunk Queuing, Call Forward Busy/Don't Answer Customer Control Activation/Deactivation, and Call Forward Busy/Don't Answer-Customer Control Forward to Number, it will make those services available on a contract basis under the California Public Utilities Commission's (PUC's) General Order 96A.¹² Under that

¹⁰ Ameritech Operating Companies Revisions to Tariff F.C.C. No. 2, Open Network Architecture, DA 91-1633 (released Dec. 27, 1991), at ¶ 40.

¹¹ See n.9, supra.

¹² See General Order No. 96-A, Rules Governing the Filing and Posting of Schedules of Rates, Rules, and Contracts Relating to Rates, Applicable to Gas, Electric, Telecommunications, Water, Sewer System, Pipeline and Heat Utilities (Cal. P.U.C., effective 1992).

General Order, however, Pactel may provide service to any customer, such as Centrex customers, under contract, without having to provide the same service to other customers needing those network functions to provide their own competitive services. Pactel should not be allowed to sidestep general availability, unbundling and resale requirements in this fashion, thereby violating the nondiscrimination goals of ONA. If there are any potential Centrex, government or other contract customers for those services, the services should be tariffed, rather than fenced off from general availability through non-tariffing.

More generally, the California PUC will be reviewing the entire range of ONA issues in a broad ONA policy proceeding. Pending the outcome of that proceeding, Pactel has only interim authority to offer intrastate ONA services.^{13/}

It is especially important at this stage of ONA development that this Commission consider the pendency of intrastate ONA issues in deciding whether to release Pactel, or any BOC, from structural separation. The BOCs' intrastate ONA offerings have become at least as significant as, if not more significant than, their federal ONA offerings in providing whatever benefits there might be from ONA in its current rudimentary state. As the Information Technology Association of America (ITAA) stated in CC Docket No. 90-623, ESPs have unanimously stated that they will not be using interstate ONA services at the rates tariffed under

^{13/} See Application of Pacific Bell, a corporation, for approval of Basic Serving Arrangements, Basic Service Elements and Complementary Network Services, Decision 90-11-076, 90-12-010 (mailed Nov. 27, 1990) at 3-4, 13-14, 25.

the rules established in the ONA Part 69 Order.^{14/} That means, as a practical matter, assuming no change in those rules, that there will be no interstate ONA.^{15/} Any hopes for a useful ONA regime in the foreseeable future thus lie almost entirely with the states.

It would therefore be irresponsible for the Commission, at this juncture, to wash its hands of intrastate ONA issues by releasing a BOC from the structural separation requirements irrespective of whatever issues may have yet to be resolved affecting that BOC's intrastate ONA offerings. Since the Commission has taken away most of the states' leverage in this area by pre-empting the states from imposing structural separation requirements for almost all BOC enhanced services in the BOC Safeguards Order,^{16/} it must take some responsibility for the reasonableness of the BOCs' intrastate ONA offerings before removing structural separation. Structural separation for any given BOC should therefore be maintained at least as long as the relevant state commissions are still reviewing ONA issues.

^{14/} See letter from Warner Sinback, Chairman, Domestic Communications Committee, ITAA, to the Hon. Alfred C. Sikes, Chairman, FCC, at 3, filed in CC Docket No. 90-623, Nov. 13, 1991.

^{15/} Id.

^{16/} The only exception is for those BOC enhanced services that are "purely intrastate." See Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571, 7632 at ¶ 122 (1991) (BOC Safeguards Order), appeal docketed sub nom. People of the State of California v. FCC, No. 92-70083 and consolidated cases (9th Cir. Feb. 14, 1992).

D. More Recent Developments Confirm the Inadequacy of ONA and the Alternate "Safeguards"

Recent developments at the interstate level have confirmed the inadequacy of ONA and other alternate "safeguards" approved in the BOC Safeguards Order and the need to retain the structural separation requirements. The BOCs filed further amendments to their ONA plans on February 14 and April 15, 1992. Those amendments to Pactel's ONA plan, unfortunately, typify the BOC foot-dragging that has extinguished any hope that ONA would ever fulfill the promises for ONA made by the Commission in Computer III.

As MCI pointed out in its Comments on the BOCs' February 14, 1992 ONA plan amendments, attached hereto as Exhibit B, the BOCs have failed to make progress since the April 1991 amendments in their plans to use new technologies in the implementation of ONA. Pactel was extremely vague in its discussion of the use of advanced technologies and did not even mention the unbundling of technologies.^{17/}

As MCI also previously pointed out in its Comments on the BOCs' April 1991 ONA plan amendments, referenced above,^{18/} those amendments had also reflected a similar lack of progress up to that point in determining how new technologies will be applied to the development of ONA, particularly the fundamental unbundling that is the prerequisite to true ONA. Thus, the BOCs have made

^{17/} See Exhibit B hereto at 4.

^{18/} See Comments of MCI Telecommunications Corporation at 13-22, CC Docket No. 88-2, Phase I (filed June 3, 1991), referenced in n.5, supra.

virtually no progress on this crucial aspect of ONA since the ONA plans were first filed.

One aspect of ONA that has been especially disappointing (and where the BOCs seem to be retrogressing), is in developing and implementing access to operations support systems (OSS) as part of their ONA plans. As the Information Technology Association of America (ITAA) has pointed out in a May 29, 1992 letter, attached as Exhibit C, ESP access to OSS will not be a reality for some time to come. In the BOC Further ONA Amendment Order, the Commission criticized the BOCs' initial OSS reports, contained in their April 1991 ONA amendments, as inadequate and required them to report annually on their further progress in developing OSS access.^{19/} Pactel's lack of progress since then is revealed by its request for a waiver of the requirement that BOC enhanced service operations take the same access to OSS that they provide to independent ESPs.^{20/}

MCI apparently is not alone in its low regard for ONA. In MCI's appeal of the ONA Orders^{21/} in the United States Court of Appeals for the Ninth Circuit, consolidated under the name of California v. FCC,^{22/} the Commission and the BOCs, including

^{19/} See Filing and Review of Open Network Architecture Plans, 6 FCC Rcd. 7646, 7668-69, at ¶ 47 (1991).

^{20/} See Pactel Waiver Request at 17.

^{21/} Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, 4 FCC Rcd 1 (1988) (BOC ONA Order), on recons, 5 FCC Rcd. 3084 (1990); further order, 5 FCC Rcd. 3103 (1990).

^{22/} People of the State of California v. FCC, No. 90-70336 and consolidated cases (9th Cir. docketed July 5, 1990).

Pactel, have expressed similar views. The Commission, in its brief to the court, stated that it always expected only a "relatively limited ... initial set of BSEs" in the BOCs' ONA plans, as finally approved, and endorsed MCI's long-held view that "only '[c]ertain limited [ONA] applications ... may be feasible within the next couple of years'" and that the new forms of interconnection originally promised by some of the BOCs "'were dependent on further technological developments and, hence, years away from realization.'"²¹ The BOCs went even further, admitting that "MCI was much closer to being correct in 1988 than it is now" when MCI argued that "'ONA may be nothing more than a repackaging of existing requirements,'" that the ONA policies outlined in Computer III were vague and "'loosely defined'" and that any "'new forms of interconnection'" were "'theoretical'" at best, "'dependent on further technological developments and, hence [were] years away from realization.'"²²

If that is how this Commission and the BOCs actually regard ONA, it is irrational for the Commission to relieve any BOC from structural separation based even slightly on ONA. That irrationality undercuts and renders meaningless a BOC's nominal compliance with the criteria previously set forth for structural relief, since those criteria, in turn, were predicated on the effectiveness of ONA. To relieve Pactel, or any BOC, for that matter, from the structural separation requirements based partly

²¹ Brief for Respondents at 64-66, California v. FCC, supra, dated April 17, 1992, attached as Exhibit D.

²² Joint Brief of Intervenors in Support of Respondent Federal Communications Commission at 9-10, California v. FCC, supra, filed May 22, 1992, attached as Exhibit E.

on ONA, now that the Commission and the BOCs, including Pactel, have conceded that ONA accomplished very little and will only effect significant change sometime in the future, if at all, is the type of "self contradiction" that brands agency action as arbitrary and capricious.^{25/}

Other developments demonstrate that ONA is not the only weak link in the "alternative safeguards" that the Commission proposes to substitute for structural separation. At a conference on the alternative safeguards earlier this year, a Commission representative conceded that "the industry's accounting systems do not have the internal controls in place to provide assurances that FCC Joint Cost rules are being followed;" "time reporting methods are unreliable;" and "independent auditors and internal auditors need to provide a better oversight function."^{26/} Since the joint cost rules are, next to ONA, the main component of the non-structural safeguards, these remarks by an FCC representative make it even clearer that now is not the time to remove the structural separation rules.

E. Pactel's Waiver Request Improperly Seeks Relief Previously Denied by the Bureau

Pactel's lack of interest in ONA is underscored by its requests for waivers of various ONA requirements previously denied by the Common Carrier Bureau. Pactel once again seeks to

^{25/} See AT&T v. FCC, 836 F.2d 1136, 1391 (D.C. Cir. 1988).

^{26/} See last page of "The Audit Process and Logistics of Compliance," Jose Rodriguez, Chief - Audits Branch, Accounting and Audits Division, Common Carrier Bureau, FCC, attached to "Telecom Affiliate Transactions Conference" Program, April 7, 1982 attached as Exhibit F.

delay the federal tariffing of Caller ID based on a supposed technical incompatibility with requirements imposed by the California PUC on intrastate Caller ID.²⁷ The Bureau has already determined that those same reasons do not justify a delay of the federal tariffing of Caller ID past December 31, 1992, prior to a decision on that issue in the Caller ID proceeding.²⁸ Pactel has given no reason not already considered to alter that determination.

Pactel also raises some new arguments for its renewed request to delay the federal tariffing of its Selective Call Acceptance service.²⁹ It had previously requested such a delay until the end of 1992, when deployment of SS7 was expected to be substantially complete, which was granted.³⁰ Now, Pactel has raised additional excuses for further delay, all of which could have been raised previously. Its request should be denied.

Conclusion

For all of the above reasons, Pactel's Petition and Waiver Request must be denied. Pactel is far from compliance with any meaningful, effective non-structural safeguards. Pactel

²⁷ Pactel Waiver Request at 3-7.

²⁸ See Memorandum Opinion and Order on Reconsideration, Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79; Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, DA 92-1477 (released Oct. 26, 1992) (ONA Waiver Order), at ¶¶ 9-11.

²⁹ Pactel Waiver Request at 7-10.

³⁰ ONA Waiver Order at ¶ 11.

therefore should not be released from the structural separation requirements.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By:

Frank W. Krogh
Frank W. Krogh
Donald J. Elardo
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20554
(202) 887-2372

Its Attorneys

Dated: December 31, 1992

APPENDIX C

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Filing and Review of)
Bell Operating Company)
Open Network Architecture Plans)

CC Docket No. 88-2
Phase I

SUPPLEMENTAL COMMENTS

MCI Telecommunications Corporation (MCI) submits these comments to complete the record bearing on the Bell Operating Companies' (BOCs') April 15, 1992 amendments to their Open Network Architecture (ONA) plans and to bring to the Commission's attention a recent filing in the MFJ proceeding.

Introduction

The Commission has apparently never sought general comments on the BOCs' April 15, 1992 ONA plan amendments. There was a limited Public Notice concerning those amendments released on May 6, 1992, but that notice focused on the requirements that the amendments include:

(1) A description of changes in... databases that are password/ID or otherwise restricted from access by BOC enhanced services marketing personnel to reflect the Commission's modified Customer Proprietary Network information requirement adopted in the BOC Safeguards Order, 6 FCC Rcd 7571.

(2) Additional Complementary Network Services (CNSs) that will be offered as Basic Service Elements (BSEs).¹

¹ Pleading Cycle Established For Comments on Amendments to BOC ONA Plans (CC Docket No. 88-2, Phase I), Public Notice DA 92-526 (released May 6, 1992).